

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0096**

Sales Tax

Responsible Officer

For the Tax Period June, 1995 – September, 1997

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ISSUES

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270 (Ind. 1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes

STATEMENT OF FACTS

The taxpayer was affiliated with a corporation that did not properly remit collected sales taxes to the state during the tax period June, 1995 through September, 1997. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the additional sales taxes, interest and penalty against the taxpayer as a responsible officer. The taxpayer protested the assessment of tax and penalty. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270 (Ind. 1995) at page 273: “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.” The factors considered to determine whether a person has such authority are the following:

1. The person’s position within the power structure of the corporation;
2. The authority of the officer as established by the Articles of Incorporation, By-laws or employment contract; and
3. Whether the person actually exercised control over the finances of the business including control of the bank account, signing checks and tax returns or determining when and in what order to pay creditors.

In 1991 the taxpayer was a retail employee of the corporation when the owners during the tax period purchased the business. At that time, the taxpayer changed her status to a commission only outside sales person. In 1993 the taxpayer was made a regular salaried employee in consideration for giving up the outside sales commissions. At that time, she was given ten shares of stock and the title of Vice President. No powers or authority accompanied her new title. The taxpayer resigned from the corporation in January 1998. During her association with the corporation, the taxpayer had no decision making authority, no ability to enter into contracts, no fiscal responsibilities, no authority to issue checks except for preauthorized checks for COD deliveries, no access to corporate books or records, and no knowledge of the tax delinquency.

The taxpayer provided significant documentation evidencing that she did not have the position within the corporate power structure, authority as an officer and employee, or control over finances that would give her the duty to remit the trust taxes to the state of Indiana. The taxpayer sustained her burden of proving that the department incorrectly assessed the corporation’s sales tax liability against her personally.

Finding

The taxpayer’s protest is sustained.